

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

KENNEDY McDOW,

Petitioner,

v.

No. CIV 07-746 JB/KBM

STATE OF NEW MEXICO,
and GARY K., KING, Attorney
General for the State of New Mexico,

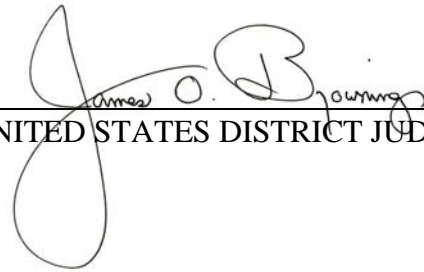
Respondents.

**ORDER ADOPTING MAGISTRATE JUDGE'S
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

The Honorable Karen Ballard Molzen, United States Magistrate Judge, filed her proposed findings on September 28, 2007, recommending that the Court dismiss this matter for lack of jurisdiction because Petitioner Kennedy McDow was no longer in state custody when he filed his federal habeas petition. *See Doc. 6*. In his objections, which do not appear timely and which the Court has reviewed de novo, McDow asserts that he was in custody when he filed his *state* petitions. *See Doc. 7* at 2 (“Petitioner was under the restraint and I did meet the requirement of **“In Custody”** at the times I filed each of my appeals”) (emphasis in original). As the Magistrate Judge noted, however, his status at the time of state filings does not control the “in custody” question for federal proceedings. *See Doc. 6* at 4.

Wherefore,

IT IS HEREBY ORDERED that: (I) the Magistrate Judge’s Proposed Findings and Recommended Disposition (*Doc. 6*) is adopted; (ii) the petition is dismissed with prejudice for lack of jurisdiction; and (iii) a final order enter concurrently herewith.


UNITED STATES DISTRICT JUDGE